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BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH  
Chairman

BOB STUMP  
Commissioner

BOB BURNS  
Commissioner

DOUG LITTLE  
Commissioner

TOM FORESE  
Commissioner

Arizona Corporation Commission

DOCKETED

MAY 19 2015

DOCKETED BY

IN THE MATTER OF THE JOINT  
APPLICATION OF MCLEODUSA  
TELECOMMUNICATIONS SERVICES,  
LLC, PAETEC COMMUNICATIONS, INC.,  
WINDSTREAM COMMUNICATIONS, INC.  
AND TALK AMERICA, INC. FOR  
APPROVAL OF WAIVER OF THE  
SLAMMING RULES AAC R-14-2-1901, AND  
TRANSFER OF CUSTOMERS TO TALK  
AMERICA SERVICES, LLC

DOCKET NO. T-03267A-15-0058  
T-03663A-15-0058  
T-20436A-15-0058  
T-20918A-15-0058  
T-03342A-15-0058

DECISION NO. 75104

ORDER

Open Meeting  
May 12 and 13, 2015  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On February 26, 2015, McLeodUSA Telecommunications Services, LLC ("McLeodUSA"), PaeTec Communications, Inc. ("PaeTec"), Windstream Communications, Inc. ("Windstream") and Talk America, Inc. ("Talk America"), together the "Windstream Entities", and Talk America Services, LLC ("TAS"), all parties collectively the "Applicants", filed a joint application requesting approval from the Arizona Corporation Commission ("Commission") for a waiver of Arizona Administrative Code ("A.A.C") R14-2-1901, the "Slamming Rules", in connection with the transfer of the Windstream Entities' residential local exchange customers in Arizona to TAS.

2. In support of this filing, Applicants provide the following information.

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**Description of the Applicants***McLeodUSA Telecommunications Services, LLC*

3. McLeodUSA's Certificate of Convenience and Necessity ("CC&N") to provide competitive resold interLATA/intraLATA telecommunications services in Arizona was granted by the Commission in Decision No. 61001 dated July 16, 1998. McLeodUSA was also granted a CC&N to provide competitive resold and facilities-based local exchange and exchange access telecommunications services in Arizona pursuant to Decision No. 62627 dated June 9, 2000.

*PaeTec Communications, Inc.*

4. The Commission approved PaeTec's application for a CC&N to provide competitive interLATA/IntraLATA resold telecommunications service (except local exchange services) in Decision No. 62458 dated April 14, 2000.

*Talk America, Inc.*

5. Talk America's application for a CC&N to provide competitive resold interexchange telecommunications service (except local exchange services) was approved by the Commission in Decision No. 64084 dated October 4, 2001.

*Windstream Communications, Inc.*

6. Windstream's CC&N to provide competitive resold long distance telecommunications service in Arizona was approved by the Commission in Decision No. 68965 dated September 21, 2006.

*Talk America Services, LLC*

7. TAS is a Delaware limited liability company and an indirect subsidiary of Communication Sales & Leasing, Inc. (which is in turn an indirect subsidiary of Windstream Holdings, Inc.). TAS has a CC&N to provide competitive resold local exchange and interexchange telecommunications service in Arizona pursuant to Decision No. 74943 dated February 9, 2015.

**Description of the Transaction**

8. The Applicants state Windstream Holdings, Inc. will be completing a transaction in which its business will be divided into two (2) independent units. The first, an operating unit, will continue to provide telecommunications and related services, and the second, a real estate investment

1 trust ("REIT"), will hold title to certain distribution plant assets (the "Subject Assets") that will be  
2 leased back exclusively to Windstream Holdings, Inc. for the benefit of the Windstream Entities on a  
3 long term basis. In connection with this transaction, the residential local exchange and long distance  
4 customers of the Windstream Entities will be transferred to TAS.

5 9. The Windstream Entities will retain all of their business customers along with their  
6 existing certifications in order to continue to provide telecommunications services to business  
7 customers. Once the transfer is complete, TAS will assume all managerial, technical and financial  
8 responsibilities in connection with providing service to the former Windstream Entities residential  
9 customers.

10 10. TAS states it will incorporate into its tariff the rates, terms and conditions of services  
11 currently provided to the Windstream Entities' residential customers. The customers transferred to  
12 TAS will continue to receive the same services from TAS they currently receive under the rates, terms  
13 and conditions of service of the Windstream Entities. The transfer is designed to be seamless as there  
14 will be no change to the customer's rates, terms and conditions of service and there will be no charge  
15 to the transferred customers.

16 **Request for Waiver of Slamming Rules**

17 11. TAS seeks a waiver of Article 19 - Consumer Protections For Unauthorized Carrier  
18 Changes (A.A.C. R14-2-1901 to -1913), the Slamming Rules, for the transfer of fewer than one  
19 hundred residential local exchange and long distance customers in Arizona. Pursuant to 47 C.F.R. §  
20 64.1120(e)(3) of the Federal Communications Commission's ("FCC") rules, beginning on or about  
21 February 24, 2015 a written notice of the transfer was provided to the Windstream Entities' customers  
22 via First Class United States mail. A copy of this notification was provided as Exhibit A to the  
23 Application.

24 12. Staff has reviewed the notice that was sent to those affected customers. Because the  
25 notice informs customers that the rates, terms and conditions of service will not change as a result of  
26 the proposed transactions and informs customers that they may subscribe to the telecommunications  
27 service provider of their choice, Staff believes the Commission's Slamming Rules should be waived in  
28 this matter.

**Complaints and Compliance**

13. The Compliance Section of the Utilities Division reports the Applicants are in compliance. The Consumer Services Section of the Utilities Division reports that from January 1, 2012 to March 5, 2014 there have been no complaints or opinions concerning Talk America, TAS and PaeTec. During this same time period, there has been one (1) cramming complaint about McLeodUSA and one (1) new service and one (1) repair complaint concerning Windstream. All aforementioned complaints have been resolved and closed.

14. According to the Corporations Division, all Applicants are in good standing. All the Companies except TAS filed their respective Utilities Annual Reports. TAS's first Utilities Annual Report is not due until 2016.

**Staff Recommendations**

15. Staff recommends approval of the TAS Application to acquire the Arizona customers of the Windstream Entities.

16. Staff further recommends that approval be conditioned on the following:

- The Applicants provide notice to Docket Control within thirty (30) days following completion of the proposed transactions in this Application;
- That TAS file an updated tariff, within thirty (30) days of the effective date of a Decision in this matter, to incorporate the residential rates, terms and conditions of service that were included in the tariffs of the Windstream Entities.

17. Staff believes the Commission's Slamming Rules apply to this transaction. However, based on the above, Staff recommends a waiver of A.A.C. R14-2-1904, et seq. and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases because the notice informs customers that the rates, terms and conditions of service will not change as a result of this proposed transfer and informs customers that they may subscribe to the telecommunications service provider of their choice.

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## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over McLeodUSA Telecommunications Services, LLC, PaeTec Communications, Inc., Windstream Communications, Inc., Talk America, Inc. and Talk America Services, LLC and the subject matter in this filing.

2. The Commission, having reviewed the filing and Staff's Memorandum dated April 22, 2015, concludes that it is in the public interest to grant approval as proposed and discussed herein.

ORDER

IT IS THEREFORE ORDERED that the Application of Talk America Services, LLC to acquire the residential customers of McLeodUSA Telecommunications Services, LLC, PaeTec Communications, Inc., Windstream Communications, Inc., Talk America, Inc. be and hereby is approved as discussed herein.

IT IS FURTHER ORDERED that the request for a waiver of A.A.C. R14-2-1904 et seq. and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the transfer of customer bases be and hereby is approved.

IT IS FURTHER ORDERED that within thirty (30) days following the closing of the proposed transaction, Talk America Services, LLC inform the Commission by filing an affidavit with Docket Control that transaction-related activities are completed.

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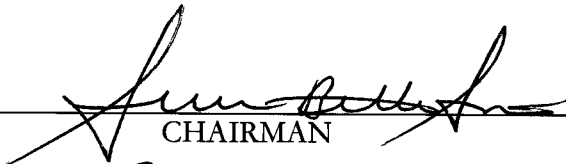
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1 IT IS FURTHER ORDERED that Talk America Services, LLC file an updated tariff, within  
2 thirty (30) days of the effective date of a Decision in this matter, to incorporate the residential rates,  
3 terms and conditions of service that were included in the tariffs of McLeodUSA Telecommunications  
4 Services, LLC, PaeTec Communications, Inc., Windstream Communications, Inc. and Talk America,  
5 Inc.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7  
8 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

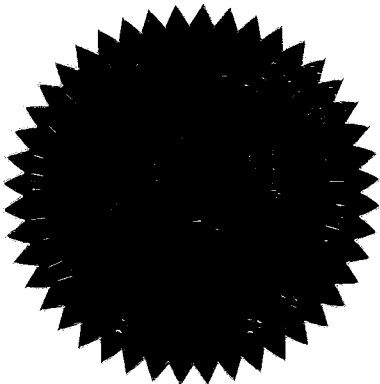
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10   
CHAIRMAN

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COMMISSIONER

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COMMISSIONER

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COMMISSIONER

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COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive  
Director of the Arizona Corporation Commission, have  
hereunto, set my hand and caused the official seal of this  
Commission to be affixed at the Capitol, in the City of  
Phoenix, this 19th day of May, 2015.

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JODI JERICH  
EXECUTIVE DIRECTOR

22 DISSENT: \_\_\_\_\_

23  
24 DISSENT: \_\_\_\_\_

25 SMO:MAC:red/RWG

1 SERVICE LIST FOR: MCLEODUSA TELECOMMUNICATIONS SERVICES, LLC, PAETEC  
2 COMMUNICATIONS, INC., WINDSTREAM COMMUNICATIONS, INC. AND TALK  
3 AMERICA, INC.

4 DOCKET NOS. T-03267A-15-0058, T-03663A-15-0058, T-20436A-15-0058, T-20918A-15-0058 and  
5 T-03342A-15-0058

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